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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID OWENS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0609-CR-538

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0506-MR-91890

July 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant David Owens (“Owens”) appeals his conviction of Murder, a felony.¹ We affirm.

Issue

Owens presents a single issue for review: whether the State failed to present sufficient evidence of probative value to support his conviction, because the testimony of the primary witness against him was incredibly dubious.

Facts and Procedural History

On May 16, 2005, Ronald Cannon (“Cannon”) drove into the parking lot of a Sunoco gas station located at 2910 Martin Luther King Street in Indianapolis, opened his truck door, and collapsed onto the pavement. Sunoco employees summoned police and medical assistance, but Cannon had already died after suffering multiple gunshot wounds. Forensic testing disclosed that the gunshots were from different guns.

On May 31, 2005, Brandon Rider (“Rider”) met with Indianapolis police officers and implicated Owens and Lee Guzman (“Guzman”) in Cannon’s death. On June 3, 2005, the State of Indiana charged Owens with murder.² On August 14, 2006, Owens’ jury trial commenced. On August 16, 2006, Owens was convicted as charged. On August 30, 2006, Owens was sentenced to fifty-five years imprisonment. He now appeals.

Discussion and Decision

¹ Ind. Code § 35-42-1-1.

In order to convict Owens of murder, as charged, the State was required to establish that he knowingly killed Cannon by shooting him. See Ind. Code § 35-42-1-1.

In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999.) We neither reweigh the evidence nor judge the credibility of the witnesses and will affirm the conviction unless, based on this evidence, we conclude that no reasonable jury could find the defendant guilty beyond a reasonable doubt. Id. Testimony from a single eyewitness is sufficient to sustain a conviction. Id.

In rare cases, the “incredible dubiosity rule” will permit an appellate tribunal to impinge upon the jury’s responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant’s guilt. Id.

Rider testified as follows. In 2005, he was a heroin addict who purchased heroin from Owens on two or three occasions. He also purchased crack cocaine from Guzman, who is Owens’ cousin. Rider would pay with cash or by agreeing to “give them a ride.” (Tr. 418.) During the early morning of May 16, 2005, Rider was driving in Indianapolis near the Sunoco station, with Guzman riding in the front passenger seat and Owens riding in the back seat. Rider’s vehicle was stopped at a stop sign when a white truck approached them from the opposite direction. Guzman stated, “There’s the mother----- that owes us money.” (Tr. 440.) Owens and Guzman began shooting in the direction of the white truck. Rider heard

² Owens was charged with additional unrelated offenses, which were later severed for a separate trial.

one of the men say, “that’s what happens when you owe us money.” (Tr. 444.) Rider drove the two men to their nearby home, then returned to the Sunoco station and saw Cannon lying on the pavement about ten feet from his white truck.

Nevertheless, Owens argues that Rider’s testimony must be excluded in its entirety because Owens is a drug addict who failed to remember specific details, and who allegedly disagreed with Sunoco employees about the number of shots fired.³ Owens presents no basis for applying the incredible dubiousity rule. We are not confronted with a situation in which a single witness provides inherently contradictory and uncorroborated testimony. Rather, Owens asks this Court to negatively assess Rider’s credibility because of drug use and to resolve in Owens’ favor perceived conflicts arising from the testimony of multiple witnesses.

However, the trier of fact, rather than this Court, is in the best position to weigh the evidence presented and to resolve conflicts arising from the testimony of multiple witnesses. Graham v. State, 713 N.E.2d 309, 311 (Ind. Ct. App. 1999), trans. denied. Here, the State presented sufficient evidence from which the factfinder could conclude that Owens, acting in concert with Guzman, murdered Cannon.

Affirmed.

SHARPNACK, J., and MAY, J., concur.

³ Rider testified that he was unsure of the exact number of shots, but acknowledged that when deposed he had stated there were “from four to eight shots.” (Tr. 515.) Employee Vaneet Basricha testified that she was in the gas station restroom when she heard noise “something like a tup, tup, tup[.]” (Tr. 144.) Employee Mohamodou Ndiaye testified that he thought he heard two shots.